83 - 1529

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FREDERICA ANN ROBINSON,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON APPEAL FROM THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR CERTIORARI

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QUESTION PRESENTED

Did the Court of Special Appeals of Maryland err in holding that Petitioner's rights under the Sixth Amendment were not violated by the decision of the trial court to sustain objections to two key cross-examination questions?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional and Statutory Provisions

Textbooks

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Did the Court of Special Appeals of Maryland err in holding that Petitioner's rights under the Sixth Amendment were not violated by the decision of the trial court to sustain objections to two key cross-examination questions?

OPINION BELOW

The Opinion of the Court of Special Appeals of Maryland was unreported. It was filed on October 26, 1983. A timely Petition for Writ of Certorari to the Court of Appeals of Maryland was filed. It was denied by Order dated January 11, 1984.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. The Sixth Amendment, United States Constitution, which provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him . . . ."

2. The statute which is the basis for the Petitioner's remaining conviction, though nothing turns on its

terms, was Section 6, Article 27, Annotated Code of Maryland:

> "Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures any dwelling house, or any kitchen, shop, barn, stable or other out house that is parcel thereof, or belonging to or adjoining thereto, whether the property of himself, or another shall be guilty of arson, and upon conviction thereof, be sentenced to the penitentiary for not more than thirty years."

STATEMENT OF THE CASE

On February 17, 1982, an indictment was returned by a Washington County, Maryland Grand Jury against the Defendant charging the crimes of arson of a dwelling, arson with intent to injure an insurer and attempted arson. All charges were with regard to a fire which occurred in the defendant's home in Hagerstown, Maryland, on the afternoon of October 7, 1980. Following

an evidentiary hearing, the trial court directed a verdict of acquittal on the charge of attempted arson. Following approximately five hours of deliberation, the jury for the Circuit Court for Washington County, Maryland, on September 28, 1982, returned verdicts of guilty on the two remaining charges. On December 16, 1982, the defendant was sentenced to concurrent five year terms in the custody of the Commissioner of Correction, all but eighteen months of the terms being suspended subject to probation. A timely appeal to the Court of Special Appeals of Maryland was noted. By an unreported Opinion filed on October 26, 1983, the Court of Special Appeals of Maryland reversed the conviction of arson with intent to injure an insurer for insufficiency of evidence; however, the conviction under

Article 27, Section 6 (arson of a dwelling) was affirmed. A timely Petition for Writ of Certiorari to the Court of Appeals of Maryland was filed, but denied by Order dated January 11, 1984.

There were no witnesses to the alleged setting of the fire. It was unrefuted that the Defendant left her home at approximately 2:00 p.m. on the afternoon of the fire, no one else being left in the house. It was further unrefuted that the Defendant returned to her house at approximately 5:30 p.m on the same afternoon to find the house surrounded by fire protection equipment and firemen. The Defendant testified and denied any knowledge of how the fire began.

Under Maryland law one element of arson is incendiarism. Indeed, Maryland

recognizes a presumption that a fire is of natural or accidental cause. See, e.g., Hughes v. State, 6 Md. App. 389 (1969).

The only evidence of incendiarism was the expert opinion of James Kittel, Maryland Fire Marshal stationed in Washington County, Maryland. Kittel was qualified as an expert in the cause and origin of fire. He testified that his inspection of the house after the fire revealed no evidence of a natural or accidental cause of the fire. He further testified that, in his opinion, the fire began on a sofa in the living room. He stated that on an end table next to that sofa he found a matchbook with several drops of what appeared to be melted wax. No evidence connected the Defendant to this matchbook or to any candles. Based solely upon this

physical evidence Kittel was permitted, over objection, to testify that in his opinion the fire was started by the placement of a candle among papers on the sofa. He characterized this as a delayed ignition device which permitted the Defendant to "start" the fire before she left the house at 2:00 p.m. on October 7, 1980.

Without question, Kittel's testimony was the cornerstone of the State's case. Absent his testimony, there was no evidence of incendiarism. By virtually any objective evaluation, the factual foundation upon which this opinion rested was a very thin one: the wax on the matchbook cover. Consequently, counsel for the defense intended to demonstrate to the jury that Kittel's professional position and natural inclinations made him a natural

ally with the State, and that he would tend to resolve all doubts in favor of the prosecution. Defense counsel sought to show the jury that Kittel's mind-set shaded his judgment in favor of the prosecution and a finding of incendiarism. To that end, counsel for the defense wanted to explore with Kittel the nature of his job, factors which motivated him in his job, and his natural predispositions. Cross-examination of Kittel was the only vehicle available for such exploration.

Kittel testified that for analytic purposes he, and his profession, placed the causes of fires into three major categories: incendiary, accidental/natural, and undetermined. Any analysis of the cause of a fire begins with it in the third category, undetermined origin. Presumably, even a

lay person could analyze the physical evidence in many fires and identify their origin as being either incendiary or accidental/natural. A professional will utilize his expertise in removing a larger percentage of all fires from the undetermined category. However, to the extent that physical clues or an investigator's skills are lacking, he is not able to transfer a fire from the "undetermined" category into another category. Thus, the number and quality of those fires whose origins are "undetermined" is one measure of the failure rate of the investigator. A perfect investigator would be able to determine the origin of all fires which he investigates; a poor investigator would necessarily leave many fires in the "undetermined" category. Even though the physical evidence was limited

to a single matchbook cover, Kittel had a clear personal interest in removing the fire from the "undetermined" category.

Below is the pertinent excerpt from pages 126-128 of the trial transcript:

> Q. [Defense counsel] Now, Mr. Kittel, I think you have told us that one of the most important portion of your job and responsibilities is to investigate the origin and cause of fires, is that not correct?
>
> A. Yes, sir.
>
> Q. And really then your objective is to identify suspected arsonists, is that correct?
>
> A. Yes, sir.
>
> Q. So therefore, couldn't we conclude that one of the things you try to do in your job is to minimize the number of fires in that undetermined origin category and maximize the number of fires for which you feel you have a suspect?

MS. LEIZEAR [Prosecutor]: Object.

THE COURT: Alright, sustained.

Q. The date of the fire was October 7, 1980, wasn't it?

A. I believe that was the date, yes, sir.

THE COURT: As I understand this question, do you have a preference? Do you try to put all fires in the category that are caused by arson or do you put fires into the category that are caused accidentally or naturally by lightning or something like that?

A. Well, try to put something - I don't like the wording there. We go out and try to determine what happened and when we determine what happens, then it is put in a category, either accidental or incendiary or whatever

Q. Well, would I be correct in saying that some of the primary categories were incendiary or arson or accidental . . .

A. Um-huh.

Q. Natural causes, lightning for example, or would you call that accidental?

A. We have three major categories.

Q. What are they?

A. Incendiary, accidental and undetermined.

Q. Now would it be fair for me to say, sir, that in your job you try to maximize the number of fires you can place in the accidental or incendiary category and minimize the number of fires in the undetermined origin category?

MS. LEIZEAR: Objection.

THE COURT: The objection will be sustained.

The expected answer to either of these two cross-examination questions would have laid the foundation for many subsequent questions having to do with Kittel's bias and the inadequacy of physical clues justifying the

categorization of this fire as incendiary.

ARGUMENT

The issue on appeal is whether the Defendant's constitutional right to confront witnesses against her and her right to cross-examine those witnesses on possible bias was violated when the trial court sustained objections to two key cross-examination questions. The decision of the Maryland Court of Special Appeals misconstrued and misapplied clear Constitutional precedent provided by this Court. Further, the review of this case by this Court will also help to correct inconsistencies between certain Circuits in the application of federal law in this area.

A. The Instant Case

Davis v. Alaska, 94 S.Ct. 1105, 415 U.S. 308, 39 L.Ed. 2d 347 (1974) stands as a clear beacon to guide trial courts in their limitation of cross-examination in criminal cases.

> Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. Subject always to the broad discretion of the trial judge to preclude repetitive and unduly harassing interrogation, the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness. . . . A more particular attack on the witness' credibility is effected by means of cross-examination directed toward revealing possible biases, prejudices or ulterior motives of the witness as they may relate directly to issues or personalties in the case at hand. The partiality of a witness is subject to exploration at trial, and is 'always

> relevant as discrediting the witness and affecting the weight of his testimony.' 3A J. Wigmore, Evidence, Sec. 940, p. 775 (Chadbourn Rev. 1970). We have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. Greene v. McElroy, 360 U.S. 474, 496, 79 S. Ct. 1400, 1413, 3 L. Ed. 2d 1377 (1959). (p.1110)

Davis emphasizes that cross-examination for the detection of possible bias is one of the principal lessons taught by the Sixth Amendment. Indeed, Davis restricts the trial judge's discretion in the limitation of cross-examination to only two grounds: repetition and undue harassment. The Court of Special Appeals disregarded this limitation.

1. Harassment. The cross-examination questions posed by

defense counsel were not designed to harass the witness, nor did they. Indeed, neither the State's Attorney, the trial court, the Assistant Attorney General for the State of Maryland, nor the Court of Special of Appeals of Maryland suggested that the questions were harassing. Thus, one of the grounds for restricting cross-examination clearly is not applicable.

2. Repetition. A review of the transcript, the appellate briefs and the Opinion of the Court of Special Appeals of Maryland reveals nothing to suggest that the first question was repitious of anything which had previously been placed into evidence. A most curious event occurred between the first of the two questions of defense counsel and the second: The trial court interrupted

cross-examination, "sanitized" the essential question, and then permitted Kittel to respond to it. Regarding the second question posed by defense counsel, the Court of Special Appeals of Maryland in its concluding paragraph on the subject says:

> In short, defense counsel got an answer to his question, although it was not the one he wanted. When he asked essentially the same question the second time, the objection was properly sustained, because the question had already been answered. (A-8)

Thus, Maryland has apparently adopted a new standard for the cross-examination of the State's witnesses: The trial court may refuse to permit a witness to answer a cross-examination question, then paraphrase that question and elicit an answer to it, and then refuse to permit defense counsel to follow up on the

question. This is a most curious juxtaposition of the "right of an accused" to confront the witnesses against him. It is a gross misconstruction of the purpose and spirit of cross-examination. Cross-examination is not supposed to be polite cocktail party conversation, nor is it supposed to be a pro forma exchange of abstract information. Rather, it is the defendant's opportunity to aggressively confront an adverse witness, and perhaps through the pressure and vitality of that confrontation expose to the jury attitudes and predispositions which the witness himself might not readily admit.

Consider the question put to Kittel by the trial court; it basically was, "Are you biased?" There can be no doubt but that the Judge and the State's

Attorney and the defense counsel all would have fallen off their chairs had the witness admitted a bias. It can hardly be contended that such a sterile question, pleasantly asked by the Judge, can fit as a substitute for the spirited questioning of that witness by counsel for the Defendant. Thus, it is clear that the questions put forth by defense counsel were not repetitious and thus they do not fit into the second ground which the Court in Davis cites as a basis for the exercise of the trial court's discretion.

3. Foundation. Inasmuch as the Court of Special Appeals of Maryland had no Constitutionally approved basis for affirming the decision of the trial court on this issue, the final ground to which they looked must also be examined. At page A-7 of the Court's Opinion it is

suggested that a proper foundation for the questions had not been laid because there had been no prior evidence with regard to the criteria upon which Kittel's job performance was evaluated. The answer to this claim is rather simple: First, one would no more expect Kittel to admit that his job performance was rated according to this criterion than one would expect a police officer to admit that he had a "quota" for speeders to be arrested on a given day. Second, the trial court must not have felt that there was an improper foundation because it asked the same question, albeit it in a sterilized form. Third, this analysis puts the cart before the horse: defense counsel was trying to get Kittel to admit a natural inclination to not categorize fires as "undetermined origin", and with that as

a foundation defense counsel would have then sought answers showing that such a pattern of job performance would be favorably viewed by Kittel's supervisors.

There was no acceptable reason for the trial court to cut off this line of questioning. Bias is always relevant. The questions were not harassing. The questions were not repetitions. There was a foundation.

Simply put, the trial court failed to grasp the breadth of the Defendant's Sixth Amendment right to cross-examination. That right includes the opportunity to explore any possible source of bias. This Court's application of this principle to the facts in Davis is most useful in its comparision to the instant facts:

> . . . defense counsel sought to show the existence of possible bias and prejudice

of Green, causing him to make a faulty initial identification of petitioner, which in turn could have affected his later in-court identification of petitioner.

We cannot speculate as to whether the jury, as sole judge of credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it. But we do conclude that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to put on Green's testimony which provided 'a crucial link in the proof . . . of petitioner's act.' Douglas v. Alabama, 380 U.S. at 419, 85 S. Ct., at 1077 . . . .

We cannot accept the Alaska's Supreme Court's conclusion that the cross-examination that was permitted defense counsel was adequate to develop the issue of bias properly to the jury. While counsel was permitted to ask Green whether he was biased, counsel was unable to make a record from which to argue why Green might have been biased or otherwise lacked that degree of

> impartiality expected of a witness at trial. On the basis of the limited cross-examination that was permitted, the jury might well have thought defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness or, as the prosecutor's objection put it, a "re-hash" of prior cross-examination. (p.1111; emphasis in original)

Contrasted with Davis, defense counsel was not even permitted to ask the witness whether he was biased; the trial court usurped the questioning. Defense counsel was certainly denied the opportunity to explore why the witness might have been biased. Defense counsel was denied the chance to elicit facts and admissions on which he might base a jury argument that Kittel was predisposed to not place fires in the "undetermined origin" category.

Consider that Kittel's opinion was the sole evidence of incendiarism. Consider that the wax on the matchbook cover was the sole fact upon which Kittel based his opinion of incendiarism. Consider that the jury deliberated approximately five hours before returning a verdict. There can be little doubt that any viable evidence of Kittel's bias might well have produced a verdict of not guilty.

B. Conflict Among Circuits

A conflict presently exists among many of the Circuit Courts of Appeal as to the standard to be used in applying the Davis doctrine to issue of witness bias.

In two cases, United States v. Tracey, 1 Cir., 675 F. 2d 433 (1982) and Niziolek v. Nashe, 1 Cir., 694 F. 2d 282 (1982), the First Circuit has adopted

what might be called the "sufficient other information" test of whether the trial judge improperly limited cross-examination of bias. Although noting that the defendant should be permitted wide latitude in the search for witness bias, especially in the cross-examination of the government's more important witnesses, the First Circuit has nonetheless taken a stand which limits the breadth of information which can be brought to the jury's attention. The First Circuit seems to be suggesting that if some evidence has been introduced as to the witness' bias, the trial court can limit the overall quantum of such evidence and exercise its discretion by restricting other cross-examination testimony (not necessarily repetitive) which may show the degree or depth of that bias.

In Tracey the First Circuit found that the trial judge had not abused his discretion in preventing the defendant from cross-examining a witness concerning the fact that the witness had been arrested for drunkenness and his bail posted by the United States attorney. The Court noted that abundant other testimony of the witness' possible bias had already been presented.

In Niziolek the First Circuit reiterated its position in Tracey. Defense counsel had been permitted to elicit testimony from government witnesses that each of them was awaiting sentencing. Defense counsel was also permitted to question one of them as to his motive for turning himself in to the police. The trial court at that point cut off additional cross-examination on bias. Unfortunately, the reported

opinion does not describe the additional questions for which the defendant was denied answers.

In United States v. Vasilios, 5 Cir., 598 F. 2d 387 (1979) the Fifth Circuit apparently adopted the same "sufficient other information" standard that has been adopted by the First Circuit. There the defense had shown that the witness was testifying pursuant to a police agreement and that he (the witness) and the defendant had had frequent conflicts over management of their jointly owned business. Apparently believing this to be sufficient indication of bias, the trial court refused to permit defense counsel to ask the witness whether he knew that the defendant was planning on testifying against the witness in another, separate

criminal action. The Fifth Circuit affirmed the trial court.

The position of the First and Fifth Circuits stands in contrast to the positions adopted in the Sixth and other Circuits. The Sixth Circuit in United States v. Leja, 6 Cir., 568 F. 2d 493 (1977) demonstrated the stark difference between its standard and the "sufficiency of other evidence" standard. In this drug distribution case the defense counsel had not been permitted to ask the amount of payment which an informant had received for other work which he had done for the Government. The trial judge had permitted voluminous evidence of the payment which the informant received for his work on the defendant's particular case, including the fact that he was on a weekly salary and received "bonus

payments" for the arrest of this and other defendants. Abundant evidence was presented that the witness' relationship to the Government as an informant had been a long-term, and well-paying one. The Sixth Circuit, however, found that that was an insufficient basis for denying defense counsel the opportunity to learn the informant's total Government compensation. The Court held that the jury was entitled to hear all evidence about payment of the informant in order to develop its own determination of the witness' bias. See also United States v. Pritchett, 6 Cir., 699 F. 2d 317 (1983), another Sixth Circuit case in which the trial judge was found to have been abused his discretion by the improper denial of cross-examination questions.

For other cases in which the Circuit Courts have reversed the trial court's restriction of cross-examination see Chipman v. Mercer, 9 Cir., 628 F.2d 528 (1980); United States v. Lindstrom, 11 Cir., 698 F. 2d 1154 (1983); and Chavis v. State of North Carolina, 4 Cir., 637 F. 2d 213 (1980).

CONCLUSION

The judgment below deprived the defendant of her Sixth Amendment right to effectively cross-examine the key State witness. This Petition for Writ of Certiorari should therefore be granted.

Respectfully submitted

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83 - 1529
No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FREDERICA ANN ROBINSON,
Petitioner,

v.

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ON APPEAL FROM THE COURT OF SPECIAL APPEALS OF MARYLAND

SUPPLEMENTAL APPENDIX

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The Daily Record Co., Baltimore, MD 21202

A-1
A-2

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 90

September Term, 1983

FREDRICA ANN ROBINSON

V.

STATE OF MARYLAND

Gilbert, C. J.
Adkins,
Morton, James C., Jr.
(Ret., Specially
Assigned)

JJ.

Per Curiam

Filed: October 26, 1983

Opinion Page 7 (formerly A-2)

C. Limitation of Cross-Examination

Robinson contends that in numerous instances her cross-examination of

witness Kittel was improperly curtailed. Before discussing the specifics of her claims, we pause a moment to review the current state of the law on this subject.

Opinion Page 8 (formerly A-3)

Cross-examination is no doubt an important weapon in the lawyer's arsenal, because it assists in the basic objective of the judicial fact-finding process - to come as close to the truth as may be. See Davis v. Alaska, 415 U. S. 308 (1974). We have stressed the broad scope of this right, and the restrictions on judicial discretion to control it, in such recent cases as Reese v. State, 54 Md. App. 281 (1983);Cox v. State, 51 Md. App. 271 (1982), cert. granted 293 Md. 726 (1982), and Fletcher v. State, 50 Md. App. 349 (1981). But as we even more

recently observed in Smith v. State, ____ Md. App. ___, slip op. at 4 (No. 189, Sept. Term, 1983, filed Oct. 13, 1983): "Despite the narrow limits of judicial discretion in this context, it nevertheless does exist."

In Smith we held that questions on cross-examination were properly excluded when they were without proper form, unduly broad, argumentative, and possibly designed to humiliate or harass the witness. Another factor a judge may consider in deciding whether to allow specific cross-examination is whether exclusion of the evidence sought is likely to prejudice the party seeking it. Fletcher v. State supra, 50 Md. App. at 256-57. And in balancing the interests involved, it is appropriate to weigh the "waste of judicial time factor ... against the value of exploration...."

Reese v. State, supra, 54 Md. App. at 289-90. That is, the importance of cross-examination does not necessarily permit a party unlimited scope to replough ground that he has already cultivated abundantly.

Opinion Page 9 (formerly A-4)

Bearing these principles in mind, we turn to Robinson's several contentions.

1. Superficiality of Kittel's Investigation

At one point during the trial, Kittel was being cross-examined about the effect flame-retardant treatment had on fabrics. He admitted that some fabrics were treated with fire retardants, and that "the degree of fire retardant in the material would have an effect on how long it might take that material to ignite and start burning...." He then admitted that he

had not had material from the sofa (where he opined the fire had started) analyzed to see whether it had been treated with flame-retardants. He explained that "it's very, very rare that you ever find it [flame-retardant material] in a household sofa because of the expense involved in treating these things." In answer to another question about the lack of analysis he said: "There are commercial laboratories thatdo this type of work [analysis] but my experience has been that they charge a fee and we are told there are no funds for that kind of stuff so I have never sent anything like that away simply because we have no facility for it."

The next question was: "So the reason you may not know what type of flame-retardant was on the sofa was because for whatever reason you didn't

feel that you could spend the money to do the analysis."

To this question an objection was sustained, and we think correctly. While Robinson now says that the question was [Opinion Page 10 (formerly A-5)] directed at exposing the superficiality of Kittel's investigation of the sofa fabric, the question itself was argumentative, and assumed a fact not in evidence (that there was some type of flame-retardant on the sofa). Most importantly, Kittel had already said that for several reasons, including lack of funds, he had not submitted the sofa fabric for analysis. If that tended to show a superficial investigation, it was already in evidence. The trial judge did not abuse his discretion in sustaining the objection.

2. Prevention of Investigation of the Fire by Others

The defense apparently wanted to show that Kittel had prevented investigation of the fire by anyone but himself. Specifically, Robinson now claims that an insurance adjuster, Wayne Berger, was prevented from conducting an investigation. Kittel could not remember whether Berger was present on the night of the fire, but agreed he "would not be surprised...if Mr. Berger would tell you that he tried to get in to make his own investigation [that night] that you wouldn't let him." Kittel was then asked: "So in effect, yours is the only investigation of this incident which was possible because you prevented other ones?" Again, an objection was sustained and again, we conclude, correctly.

The question incorrectly assumed the existence of evidence that Kittel had prevented all investigations of the fire, not just Berger's. Kittel had already testified that it was his practice to ask firefighters to keep people away from the scene [Opinion Page 11 (formerly A-6)] during and immediately following a fire, but this is not tantamount to a general prohibition of investigations. In point of fact, Berger testified that the restrictions on his investigation applied only on the night of the fire. The next day, he was permitted full access to the premises.

3. Habits of Arsonists

During cross-examination Kittel testified that there were many reaons for arson, such as pyromania, spite or hatred, and financial gain. He thought

financial gain to be the most likely motivation for the Robinson fire. He admitted that an arsonist will usually receive financial gain only when there is insurance. He asserted that an arsonist seeking financial gain often removes valuable items from the property to be burned, or substitutes less valuable items. At the conclusion of all this (and more) he was asked:

> And if indeed financial gain is your motive, wouldn't you want to set a fire that's going to consume as much of your property as possible, as completely as possible?
>
> * * *
>
> Isn't it also correct that people who start fires for financial gains have recently purchased insurance against the proposed loss?

Objections to both questions were sustained on the grounds that they were argumentative and overbroad. We perceive no reversible error here. The second question was also repetitious.

4. Witness Bias

Defense counsel ascertained that fire investigators place [Opinion Page 12 (formerly A-7)] the cause of a fire in one of three categories: incendiary; accidental/natural; or undetermined. He then asked Kittel two questions, each suggesting tht Kittle tried to "minimize" the number of fires he classified as "undetermined" and tried to "maximize" the number classified as "incendiary." This, Robinson says, was supposed to lay a basis for showing bias by Kittel, because of his assumed proclivity for classifying fires as "incendiary," a proclivity asserted to arise from the notion that success as a fire investigator is equated to identifying a large number of fires as "incendiary."

Kittel had already testified that in a substantial number of fires, the cause is undetermined. There is no suggestion in the record that his job performance was rated acccording to the number of incendiary fires he identified, or that there was some sort of quota in this regard. Thus, it is doubtful that a proper foundation for these questions had been laid. Even more significant, however, is the fact that Kittel actually answered the questions. After the objection to the first one had been sustained, another question was asked, but the court and Kittel went on discussing the "minimization" issue:

> THE COURT: As I understand this question, do you have a preference? Do you try to put all fires in the category that are caused by arson or do you put fires into the category that are caused accidentally or naturally by

> lightning or something like that?
> A. [By Kittel]: Well, try to put something -- I don't like the wording there. We go out and try to determine what happened and [Opinion Page 13 (formerly A-8)] when we determine what happens, then it is put in a category, either accidental or incendiary or whatever.

In short, defense counsel got an answer to his question, although it was not the one he wanted. When he asked essentially the same question the second time, the objection was properly sustained, because the question had already been answered.

Opinion Page 19 (formerly A-9)

CONVICTION UNDER ART. 27, SEC. 9 REVERSED. CONVICTION UNDER ART. 27, SEC. 6 AFFIRMED. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY WASHINGTON COUNTY.

Formerly A-10)

IN THE COURT OF APPEALS OF MARYLAND

FREDRICA ANN ROBINSON

v.

STATE OF MARYLAND

PETITION DOCKET NO. 540
SEPTEMBER TERM, 1983
(No. 90, September Term, 1983
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above-entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: January 11, 1984

END OF DOCKET